



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FTI/166153

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 21, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Dane County Department of Human Services and the Wisconsin Public Assistance Collection Unit in regard to FoodShare benefits (FS), a hearing was held on August 5, 2015, by telephone. Hearings set for June 10 and July 7, 2015, were rescheduled at the petitioner's request, because he claimed that he was not ready for the hearing. The petitioner again claimed to be unprepared on August 5, 2015, but this Judge decided to proceed nonetheless.

The issues for determination are (1) whether petitioner's appeal was timely, and (2) whether the Department correctly sought to intercept the petitioner's state income tax refund to collect an overpayment of FoodShare benefits.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: Megan Thurston, Overpayment Spec.  
Dane County Department of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Columbia County.
2. On October 22, 2014, the Department mailed two *Notice of FS Overissuance* letters and worksheets to the petitioner at his correct mailing address of [REDACTED] WI. The *Notice* was not returned as undelivered. The *Notices* advised the petitioner to file any appeal of the overpayment within 90 days. He did not do so. Instead, the petitioner telephoned county agency worker Megan Thurston on February 16, 2015, to complain about the overpayment.
3. The Department mailed written notice of a negative action to the petitioner's correct address of [REDACTED] on **March 13, 2015**. The negative action was notification of state income tax refund interception. Specifically, the interception notice states that an unpaid FS debt of \$13,730.00 remained for possible interception. The notice also advised the petitioner to file an appeal of the interception certification within 30 days of the March 13, 2015, notice. The notice was not returned as undelivered.
4. The petitioner filed a hearing request with the Department on May 21, 2015, which is more than 30 days after the March 13 notice.
5. The Department received a partial payment (\$230) towards a different overpayment (BadgerCare Plus health insurance) from this household in 2015. Nothing has been paid on the FS overpayments.
6. The petitioner's assertion that he did not receive the March 13, 2015 tax interception notice was not credible.

### **DISCUSSION**

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning FS eligibility or overpayment must be filed within 90 days of that determination. 7 C.F.R. § 273.15. An appeal from a state tax refund interception notice must be filed within **30** days of the date of the interception notice. Wis. Stat. §49.85(3)(a)2. The petitioner's May 2015 appeal is more than 30 days from the March 13, 2015 interception notice. Thus, no jurisdiction exists for me to review the correctness of the 2015 interception decision.

The loquacious petitioner complained that he does not always check his mail promptly, as he is sometimes away from home on his job. However, 30 days is not an especially short appeal window, plus it is what state law requires.

### **CONCLUSIONS OF LAW**

1. The petitioner's May 2015, appeal was untimely with respect to the Department's March 13, 2015 refund interception certification.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

## REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

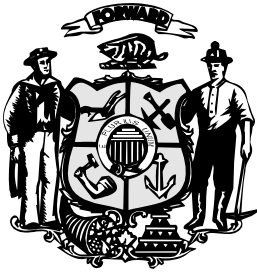
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 6th day of August, 2015

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\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on August 6, 2015.

Dane County Department of Human Services  
Public Assistance Collection Unit